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Western N.C.  
Railroad Co.

1852



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A BILL  
TO INCORPORATE  
THE  
WESTERN NORTH CAROLINA  
RAILROAD COMPANY

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RALEIGH:  
SEATON GALES, PRINTER TO THE LEGISLATURE.  
1852

[Introduced by Mr. WEBB.—Read first time and passed,  
and referred to the Committee on Internal Improvements,  
and ordered to be printed.]

## A BILL

To incorporate the Western North Carolina Rail Road Company.

I. *Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same.* That for the purpose of effecting a Rail Road Communicaton between the Union and Spartanburg Railroad, at Spartanburg, Court House, South Carolina, and the town of Knoxville, Tennessee, the formation of a Corporate Company, with a capital stock of one Million of dollars, is authorized, to be called the Western North Carolina Rail Road Company, and when formed in compliance with the conditions, hereinafter prescribed, to have a corporate existence as a body politic in perpetuity.

II. *Be it further enacted,* That the said company be and the same is hereby authorized to construct a Rail Road, beginning at Spartanburg Court House, South Carolina running thence through the County of Rutherford, near Rutherfordton, North Carolina, and by the most practical route crossing the Blue Ridge in the Reedy Patch Gap to the line of the State of Tennessee. Said line to be intersected at such a point as will form a junction with a Rail Road from Knoxville to the dividing line between the States of North Carolina and Tennessee.

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III. *Be it further enacted*, That for the purpose of creating the Capital Stock of said Company, the following be and the same are hereby appointed Commissioners, viz:

IV. *Be it further enacted*, That whenever the sum of three hundred thousand dollars shall be subscribed in manner and form aforesaid, in shares of one hundred dollars each, the subscribers, their executors, administrators or assigns shall be and they are hereby declared incorporated into a Company, by the name and style of the Western North Carolina Rail Road Company; and by that name shall be capable in law and Equity, of purchasing, holding, selling, leasing and conveying estates, real, personal, and mixed, and of acquiring the same by gift or devise, so far as shall be necessary for the purposes embraced within the scope, object and interest of their character and no further, and shall have perpetual succession, and by their corporate name may sue and be sued, plead and be impleaded, in any Court of law and Equity in the State of North Carolina; and may have and use a common Seal, which they may alter and renew at pleasure, and shall have and enjoy all other rights and immunities which other corporate bodies, may, and of right do, exercise; and make all such by-laws, rules and regulations, as are necessary for the government of the corporation or effecting the object for which it was created, not inconsistent with the Constitution and laws of the State.

V. *Be it further enacted*, That it shall be the duty of the  
2 Commissioners or a majority of them appointed under  
3 the third Section of this act, as soon as the sum of three  
4 hundred thousand dollars shall have been subscribed in  
5 manner aforesaid, in shares of one hundred dollars each  
6 to appoint a time for the stock holders to meet at Ash-  
7 ville in the County of Buncombe, after having given at  
8 least thirty days notice; at which time and place a ma-  
9 jority of the Stockholders, being represented in person or  
10 by proxy, shall proceed to elect nine Directors, out of  
11 the number of Stockholders, each of whom shall possess  
12 at least five shares of the stock, and the said Stockhol-  
13 ders shall then proceed to elect a President and Treas-  
14 1urer, out of the number of Stockholders ; and the said  
15 directors shall have power to perform all other duties,  
16 necessary for the government of the corporation and the  
17 transaction of its business. The persons elected direc-  
18 tors at the meeting aforesaid, shall serve such period,  
19 not exceeding one year, as the Stockholders may direct,  
20 and at that meeting the Stockholders shall fix on the  
21 day and place or places where the subsequent election  
22 of President, Treasurer and Directors, shall be held;  
23 and such elections thenceforth shall be annually made,  
24 but if the day of the annual election should under any  
25 circumstances pass without the election of officers, the  
26 corporation shall not thereby be dissolved, but the  
27 officers elected shall continue in office until a new elec-  
28 tion takes place.

VI. *Be it further enacted*, That the election of Presi-  
2 dent, Treasurer and Directors shall be by ballot; each  
3 Stockholder having as many votes as he has shares in  
4 the stock of the Company, and the persons having a  
5 majority of the stock polled shall be considered duly  
6 elected. And at all elections, and upon all votes taken  
7 in any meeting of the Stockholders, upon any by-law,  
8 or any of the affairs of the Company, each share of stock

9 shall be entitled to one vote, to be represented either in  
 10 person or by proxy, and proxies may be verified in such  
 11 manner as the by-laws of the Company may prescribe.

VII. *Be it further enacted*, That the board of directors  
 2 may fill all vacancies which may occur in it during the  
 3 period for which they have been chartered, and in the  
 4 absence of the president, may appoint a president *pro*  
 5 *tempore*, to fill his place, from among their own number.

VIII. *Be it further enacted*, That the Board of Directors  
 2 may call for the sums subscribed as stock in said com-  
 3 pany, in such instalments as the interest of said com-  
 4 pany may, in their opinion, require ; the call for each  
 5 payment shall be published in one or more newspapers  
 6 for the space of one month before the day of payment ;  
 7 and on failure of any stockholder to pay each instal-  
 8 ment, as thus required, the directors may sell, at public  
 9 auction, on a previous notice of ten days, for cash, all  
 10 the stock subscribed for in said company, by such  
 11 stockholder, and convey the same to the purchaser, at  
 12 said sale ; and if said sale of stock do not produce a  
 13 sum sufficient to pay off the incidental expenses of the  
 14 sale, and the entire amount owing by such stockholder  
 15 to the company, for such subscription of stock, then and  
 16 in that case the whole of such balance shall be held as  
 17 due at once to the company, and may be recovered of  
 18 such stockholder or his executors, administrator or as-  
 19 signs, at the suit of said company, either by summary  
 20 motion, in any Court of superior jurisdiction, in the  
 21 county where the delinquent resides, on previous notice  
 22 of ten days to said subscriber, or by the action of as-  
 23 sumpsit, in any court of competent jurisdiction, or by  
 24 warrant before any justice of the peace, where the sum  
 25 does not exceed one hundred dollars, and in all cases  
 26 of assessment of stock before the whole amount has  
 27 been paid to the company, then for all such sums due  
 28 on such stock, both the original subscribers, and the

29 first and all subsequent assignees, shall be liable to the  
30 company, and the same may be recovered as above de-  
31 scribed.

IX. *Be it further enacted*, That the debt of the stock-  
2 holders, due to the company, for stock therein, either as  
3 original proprietor, or as first or subsequent assignee,  
4 shall be considered as of equal dignity with judgments  
5 in the distribution of assets of a deceased stockholder,  
6 by his legal representatives.

X. *Be it further enacted*, That the said company shall  
2 issue certificates of stock to its members ; and said  
3 stock may be transferred in such manner and form as  
4 may be directed by the by laws of the company.

XI. *Be it further enacted*, That said company may at  
2 any time increase its capital stock to a sum sufficient  
3 to complete said road, and not exceeding the additional  
4 sum of one million of dollars, making, in the whole,  
5 two millions of dollars, either by opening books for the  
6 subscription of new stock, or borrowing money on the  
7 credit of the company, and on the mortgage of its char-  
8 ter and works, and the manner in which the same shall  
9 be done in either case; shall be prescribed by the stock  
10 holders.

XII. *Be it further enacted*, That the company shall  
2 have power, and may proceed to construct, as speedily  
3 as possible, a railroad, with one or more tracks, from  
4 Spartanburg Court House, South Carolina, running  
5 thence through the county of Rutherford, near Ruther-  
6 fordton, North Carolina, and by the most practical  
7 route, crossing the Blue Ridge in the Reedy Patch  
8 Gap, to the line of the State of Tennessee; said com-  
9 pany, shall have the privilege of using any section of  
10 the said road constructed by them, before the whole of  
11 said road shall be completed.

XIII. *Be it further enacted*, That all contracts or agreements, authenticated by the president and secretary of the board, to be appointed by the directors, shall be binding on the company, with or without a sale; such a mode of authentication shall be used by the company, as the company by their by-laws may adopt.

XIV. *Be it further enacted*, That said company may purchase, have and hold in fee, or for a term of years, any lands, tenements or hereditaments, which may be necessary for the said road, or for the erection of depositories, store houses, or houses for the officers, servants or agents of the company, or for work shops or foundries, to be used by the company, or for procuring stone or other materials necessary to the construction of the road, or effecting transportation, and for no other purpose whatever.

XV. *Be it further enacted*, That the company shall have the right, when necessary, to construct the said road across any public road: *Provided*, That the said company shall not obstruct any public road, without first constructing one equally as good and as convenient.

XVI. *Be it further enacted*, That when any lands or rights of way be required by said company, for the purpose of constructing their road, and for want of agreement as to the value thereof, or for any other cause, the same cannot be purchased from the owner or owners, the same may be taken at valuation, to be appointed by any Court of Record, having a common law jurisdiction, in the county where some part of the land or right of way, is situated. In making said valuation, the said commissioners shall take into consideration the loss or damage which may accrue to the owner or owners, in consequence of the land or right of way being surrendered, and the benefit and advantage, he, she or they may receive from the erection o

15 the said road, and shall state particularly the value and  
 16 amount of each ; and the excess of the loss and damage  
 17 over and above the advantage and benefits shall form  
 18 the measure of valuation of said land or right of way :  
 19 *Provided*, nevertheless, That if any person or persons,  
 20 over whose land the road may pass, or the company,  
 21 should be dissatisfied with the valuation of the said  
 22 commissioners, then, and in that case, either party may  
 23 have an appeal to the Superior Court. The proceed-  
 24 ings of said commissioners, accompanied with a full  
 25 description of the said land, or right of way, shall be  
 26 returned, under the hands and seals of a majority of  
 27 the commissioners, to the Court from which the com-  
 28 mission issued, there to remain a matter of record.  
 29 And the lands, or right of way, so valued by the com-  
 30 missioners, shall vest in the said company so long as  
 31 the same shall be used for the purposes of said railroad,  
 32 so soon as the valuation may be paid, or when refused,  
 33 may have been tendered : *Provided*, That on applica-  
 34 for the appointment of commissioners under this sec-  
 35 tion, it shall be made to appear to the satisfaction of  
 36 the Court, that at least ten days previous notice has  
 37 been given by the applicant to the owner or owners of  
 38 land proposed to be condemned : *Provided, further,*  
 39 That the right of condemnation shall not authorize the  
 40 said company to invade the dwelling house, yard or  
 41 garden of any individual, without his consent.

XVII. *Be it further enacted*, That the right of said com-  
 2 pany to condemn lands, in the manner described in the  
 3 16th section of this act, shall extend to the condemning  
 4 only one hundred feet on each side of the main track  
 5 of the road, measuring from the centre of the same,  
 6 unless in case of deep cuts and fillings, when said com-  
 7 pany shall have power to condemn as much in addition  
 8 thereto, as may be necessary for the purpose of construct-  
 9 ing said road ; and the company, in like manner, shall  
 10 also have power to condemn any appropriate lands for

11 constructing and building of depots, shops, warehouses,  
 12 buildings for servants, agents, and persons employed on  
 13 the road, not exceeding two acres in one lot or station.

XVIII. *Be it further enacted*, That all lands on which  
 2 the road may be located, not heretofore granted by the  
 3 State, within one hundred feet of the centre of the road,  
 4 which may be constructed by said company, shall vest  
 5 in the company as soon as the line of the road is defi-  
 6 nitely laid out through it, and any grant of said land  
 7 thereafter, shall be void.

XIX. *Be it further enacted*, That the said company shall  
 2 have the exclusive right of conveyance, or transporta-  
 3 tion of persons, goods, merchandize and produce, over  
 4 said road, at such charges as may be fixed on by a ma-  
 5 jority of the directors.

XX. *Be it further enacted*, That said company shall  
 2 have the right, and it shall be their duty, to take, at the  
 3 store houses they may establish on, or annex to their  
 4 railroad or the branches thereof, all goods, wares, mer-  
 5 chandise and produce, intended for transportation, pre-  
 6 scribe the rules of priority and charge, and receive such  
 7 just and reasonable compensation for storage, as they,  
 8 by rules, may establish, which they shall cause to be  
 9 published, or as may be fixed by agreement.

XXI. *Be it further enacted*, That if any person shall in-  
 2 trude on the said railroad, by any manner of use thereof,  
 3 or of the rights and privileges connected therewith,  
 4 without their permission, and contrary to the will of the  
 5 said company, he, she, or they, may be indicted for mis-  
 6 demeavor, and upon conviction, fined and imprisoned  
 7 by any court of competent jurisdiction.

XXII. *Be it further enacted*, That, if any person shall  
 2 wilfully and maliciously destroy, or in any manner dam-

3 age or obstruct, or shall wilfully or maliciously cause,  
 4 or aid or assist, or counsel and advise, any other person  
 5 or persons, to destroy, or in any manner injure or ob-  
 6 struct the said railroad, or any bridge or vehicle, used  
 7 for or in the transportation thereon, any water tank,  
 8 ware house, or any other property of said company, such  
 9 person or persons so offending shall be liable to be in-  
 10 dicted therefor, and, on conviction, shall be imprisoned  
 11 not more than six, nor less than one month, and pay a  
 12 fine not exceeding five hundred dollars, at the discretion  
 13 of the court, before which said conviction shall take  
 14 place, and shall be further liable to pay the expenses of  
 15 repairing the same.

XXIII. *Be it further enacted*, That the profits of the  
 2 company, or so much thereof, as the board of directors  
 3 may deem advisable, shall, when the affairs of the com-  
 4 pany will permit, be semi-annually divided among the  
 5 stockholders, in proportion to the stock each may own.

XXIV. *Be it further enacted*, That notice of process  
 2 upon the principal agent of said company, or the presi-  
 3 dent or any of the directors thereof, shall be deemed and  
 4 taken to be due and lawful notice of service of process  
 5 upon the company.

XXV. *Be it further enacted*, That said company shall  
 2 have power to construct branches to said road, or to con-  
 3 nect with any other railroad that may be constructed ;  
 4 and any contract that may be entered into with any  
 5 other railroad company, by the president and director s  
 6 of said company, after the consent of a majority of the  
 7 stockholders having been first obtained, shall be binding  
 8 on said company.

XXVI. *Be it further enacted*, That, provided the State  
 2 of South Carolina shall grant a charter of like provisions

3 with this act, then the said railroad company shall have  
4 corporate existence in this State, and in South Carolina,  
5 as one company, unless the stockholders in North Caro-  
6 lina shall prefer a separate existence, and so determine  
7 in their first meeting ; and in that event, or if the State  
8 of South Carolina fails at the next term of her Legisla-  
9 ture, to concur in this or a similar charter, then it shall  
10 be competent for the company hereby incorporated, to  
11 make their road to such point on the South Carolina  
12 line, as they shall determine.

XXVII. *Be it further enacted*, That all officers of the  
2 company, and servants and persons in the actual em-  
3 ployment of the company, be, and they are hereby ex-  
4 empted from performing ordinary military duty, work-  
5 ing on public roads, and serving as jurors.

## P E T I T I O N.

The undersigned citizens of the Town of Fayetteville, and of the County of Cumberland, respectfully pray the General Assembly, to pass the accompanying Bill for the establishment of a Bank in Fayetteville.

Your memorialists respectfully show, that there is in Fayetteville and Cumberland County, a great want of Banking facilities, and that the amount of Capital is inadequate to the requirements of business.

Twenty five years ago, the amount of Banking Capital was \$1,050,000. Now, although the population has very largely increased since 1830, the Capital employed is only \$830,000. Then, two Steamers were sufficient for the carrying trade between Fayetteville and the port of Wilmington. Now there are 10 Steamers actively engaged, and 3 others are in progress of building. In the mean time the trade has more than doubled. Then, scarcely a barrel of Naval Stores was exported; now there are 36 distilleries within the reach of the market of Fayetteville, and dependent upon it for supplies, and requiring to successfully carry on business a Capital of \$400,000. Then there was not a cotton spindle in motion; now there is in Fayetteville and its vicinity, seven Cotton Mills, and an extensive Paper Mill, with a Capital of at least \$450,000.

In the last four years, the citizens of this County have perfected five Plank Roads, viz:

The Fayetteville and Western, stretching out 120 miles, to Salem, 106 miles of which have been completed.

The Southern Road, 17 miles completed.

The Northern Road, of 60 miles, 10 of which are completed and under toll.

The Raleigh Road of 60 miles, 11 of which are completed and under toll.

The Centre Road reaching through Richmond, Montgomery, Stanly, and Cabarrus County to Concord, 15 miles of which are nearly completed and 35 miles under contract, besides numerous branches diverging from the main stems of these several Roads—the whole investments on Plank Roads reaching to at least \$375.000.

The export value of timber and lumber down the Cape Fear River, to Wilmington, from Cumberland alone, amounts to \$500.000. The latter, the product of 8 Steam Mills, and numerous Water Mills.

Your memorialists therefore represent, that the development of the resources of this county, and the successful issue of the numerous enterprizes, requires an increase of Banking facilities, and they rely upon the wisdom and liberality of the Legislature for proper chartered privileges.

W. W. Waddill, Jr.  
 Joel Williams,  
 N. R. McDuffie,  
 T. S. Lutterloh,  
 Chs. Montague,  
 A. A. McKethan,  
 Augustus W. Steel,  
 Jos. Utley,  
 C: Benbow,  
 Geo. McNeill,  
 Cook & Taylor,  
 Ray & Pearce,  
 Thos. J. Curtis,  
 S.W. Tillinghast,  
 Warren Wins'ow,  
 Wm. H. Haigh,  
 William J. Latta,  
 J. M. Williams,  
 D. & W. McLaurin,  
 N. Branson,  
 H. Branson,

A. H. Whitfield,  
 J. D. Callais,  
 John P. Leonard,  
 R. Little,  
 Tho. H. Massy,  
 Wm. Watson,  
 W. J. McDiarmid,  
 J. B. Nicholson,  
 Robert Mitchell,  
 G. W. McDiarmid,  
 W. W. Jones,  
 M. W. Jessup,  
 McDonald & J. W. Masten,  
 Peter P. Johnson,  
 S. F. Arey,  
 Jno. Smith,  
 S. Boon,  
 T. G. Hall,  
 L. H. Steel,  
 J. C. Thomson,  
 S. J. Hinsdale,

- Edw'd Lee Winslow,  
 J. McGilvary,  
 D. T. Newby,  
 A. W. Campbell,  
 Edwin Glover,  
 C. S. Irving,  
 J. B. Hawley,  
 Warren Prior.  
 Geo. W. McDonald,  
 P. Shemwell,  
 Jas. D. Nott,  
 John Nott,  
 Charles Banks,  
 C. A. McMillan,  
 Jas. A. McRae,  
 G. Dorning,  
 C. W. Andrews,  
 Willkings & Co.,  
 John H. Hall,  
 Hall & Sackett,  
 J. G. Shepherd,  
 William Bow,  
 Beverly Rose,  
 Thos. C. Fuller,  
 Jno. D. McWilliams,  
 Isaac Dodd,  
 Thos. J. Robinson,  
 Benj. F. Pearce,  
 James Crow,  
 J. S. Banks,  
 P. Taylor,  
 E. S. Hobbs,  
 C. Carson,  
 W. H. Carver,  
 Jas. Cain,  
 David Gee,  
 Alex. Johnson & Co.,  
 Hugh Graham,  
 W. F. Moore,  
 J. T. Council & Cain,  
 Chas. D. Nixon,  
 F. D. Briell,  
 C. S. Johnson,  
 J. W. Leet,  
 W. McIntyre,
- J. M. Beasley,  
 And. O'Hanlon,  
 Cook & Johnson,  
 J. L. Waddill  
 A. M. Laughtin,  
 J. W. Powers,  
 W. G. Barbee,  
 Alex. Williams,  
 G. W. J. Goldston,  
 J. B. Ferguson,  
 J. H. Pemberton,  
 Gnat Baker,  
 John C. Haigh,  
 Geo. Lauder,  
 N. A. Stedman,  
 John Smith,  
 Archibald Graham,  
 John McRae,  
 D. McRae,  
 Daniel Clark,  
 John Fort,  
 W. H. Lutterloh,  
 A. M. Johnson,  
 J. P. Johnson,  
 W. P. Horne,  
 J. C. Stedman,  
 E. Fuller,  
 O. P. Stark,  
 A. C. Hart,  
 D. G. McRae,  
 Geo. S. Hodges,  
 B. Fuller,  
 Lawrence & Troy,  
 W. B. Wright,  
 W. A. Huske,  
 M. McKinnon,  
 R. M. Orrell,  
 J. E. Bryan,  
 J. Winslow,  
 C. Lutterloh.  
 W. G. Mathews,  
 A. J. McPherson, Jr.  
 W. A. Rose,  
 T. P. Underwood,  
 W. T. Evans.

We certify that notice has been given in the Fayetteville Observer, for more than thirty days prior to this time, that an application would be made to the present General Assembly, to charter the Bank of North Carolina, in the town of Fayetteville.

E. J. HALE & SON,  
*Proprietors of the Observer.*

OCTOBER 28, 1852.

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Syracuse, N. Y.  
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